



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
---------------	-------------	----------------------	---------------------

08/319,464 10/04/94 CLOUGH

26M2/0404

CHARLES J BARBAS  
CESARI AND MCKENNA  
30 ROWES WHARF  
BOSTON MA 02110

W	
EXAMINER	
BRIER, J	
ART UNIT	PAPER NUMBER

2615

DATE MAILED:

04/04/95

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☐ Responsive to communication filed on \_\_\_\_\_ ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s) \_\_\_\_\_ days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- |   |  |
|---|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input checked="" type="checkbox"/> Notice of Draftsman's Patent Drawing Review, PTO-948. |
| 3. <input checked="" type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449.      | 4. <input type="checkbox"/> Notice of Informal Patent Application, PTO-152.                  |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474.     | 6. <input type="checkbox"/> _____  |

Part II SUMMARY OF ACTION

1. ☒ Claims 1, 16-27 are pending in the application.

Of the above, claims \_\_\_\_\_ are withdrawn from consideration.

2. ☒ Claims 2-15 have been cancelled.

3. ☐ Claims \_\_\_\_\_ are allowed.

4. ☒ Claims 1, 16-22 and 24-27 are rejected.

5. ☒ Claims 23 15 are objected to.

6. ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. ☐ Formal drawings are required in response to this Office action.

9. ☐ The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).

10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).

11. ☐ The proposed drawing correction, filed \_\_\_\_\_, has been ☐ approved; ☐ disapproved (see explanation).

12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_.

13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. ☐ Other

EXAMINER'S ACTION

**Part III DETAILED ACTION**

***Specification***

1. This application does not contain an Abstract of the Disclosure as required by 37 C.F.R. § 1.72(b). An Abstract on a separate sheet is required.

***Double Patenting***

2. Claims 1, 16-22 and 24-27 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2 and 6-15 of U.S. Patent No. 5,379,057. Although the conflicting claims are not identical, they are not patentably distinct from each other because the minor differences in the claim language is an obvious way of prolonging applicants patent coverage. The independent claims of this application 1, 24 and 26 are slightly broader than the patented claims. Claim 1 is similar in scope to patented claim 12 and claims 16 to 22 which depend directly or indirectly upon claim 1 are similar in scope to patented claims 2 and 6-11 which are directly or indirectly dependent upon claim 1. To shift the dependency of patented dependent claims from one patented claim to another patented claim in this application is an obvious way of unduely extending the time of applicants patent protection. Claim 24 is similar to patented claim 12. Claim 25 is similar to patented claim 13 except that patented claim 13 has a pictogram memory while claim 25 substitutes the syntax memory of patented

claim 10 for the pictogram memory of patented claim 13. This is an obvious way of unduely extending the time of applicants patent protection. Claim 26 is similar to patented claim 14. Claim 27 is similar to patented claim 15 except that patented claim 15 has a pictogram memory while claim 25 substitutes the syntax memory of patented claim 10 for the pictogram memory of patented claim 15. This is an obvious way of unduely extending the time of applicants patent protection.

3. Applicants' claimed invention is broader than the claimed invention of applicants' earlier application/patent for the reasons given above. The courts have upheld a holding of obvious type double patenting of claims to a later filed application when the claims of the later filed application are broader than the claims of the earlier filed application/patent. *In re Vogel*, 164 USPQ 619 (CCPA 1970). *In re Schneller*, 188 USPQ 210 (CCPA 1968).

4. The obviousness-type double patenting rejection is a judicially established doctrine based upon public policy and is primarily intended to prevent prolongation of the patent term by prohibiting claims in a second patent not patentably distinct from claims in a first patent. *In re Vogel*, 164 USPQ 619 (CCPA 1970). A timely filed terminal disclaimer in compliance with 37 C.F.R. § 1.321(b) would overcome an actual or provisional rejection on this ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 C.F.R. § 1.78(d).

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --  
(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

6. Claim 24 is rejected under 35 U.S.C. § 102(e) as being anticipated by Day, Jr. et al U.S. Patent No. 4,763,356.

***Allowable Subject Matter***

7. Claim 23 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffery A. Brier whose telephone number is (703) 305-4723. The examiner can normally be reached on Monday through Friday from 8:45am to 5:15pm eastern time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tommy P. Chin, can be reached on (703) 305-4715. The fax phone number for this Group is (703)-305-9508.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-4700.

March 30, 1995

*Jeffery A. Brier*  
JEFFERY BRIER  
PRIMARY EXAMINER  
GROUP 2600